Council Regulation (EC) No 240/2008 of 17 March 2008 repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 240/2008

of 17 March 2008

repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Articles 9 and 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 2002, by Regulation (EC) No 92/2002[(2)], the Council imposed definitive anti-dumping duties ranging from EUR 7,81 to EUR 16,84 per tonne on imports of urea, whether or not in aqueous solution, originating in Belarus, Croatia, Libya and Ukraine. By the same Regulation, definitive anti-dumping duties ranging from EUR 6,18 to EUR 21,43 per tonne were imposed on imports of urea originating in Estonia, Lithuania, Bulgaria and Romania and were automatically repealed on 1 May 2004 and 1 January 2007 respectively, the date of accession of these countries to the Community.

2. Request for review

(2) In April 2006, the Commission published a notice of impending expiry of the existing measures[(3)]. On 17 October 2006 the Commission received a request for an expiry review of these measures pursuant to Article 11(2) of the basic Regulation.

(3) This request was lodged by the European Fertiliser Manufactures Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of urea.

(4) The applicant alleged, and provided sufficient prima facie evidence for its allegation, that the expiry of the measures would be likely to result in a continuation or

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 240/2008. (See end of Document for details)*

recurrence of dumping and injury to the Community industry with regard to imports of urea originating in Belarus, Croatia, Libya and Ukraine (the countries concerned).

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission initiated this review by publishing a notice of initiation in the *Official Journal of the European Union*[4].

3. Investigations concerning other countries

(6) In May 2006, the Commission initiated a review[5] of the definitive anti-dumping duties imposed by Council Regulation (EC) No 901/2001[6] on imports of urea originating in Russia pursuant to Article 11(2) and (3) of the basic Regulation. As a result of this review, the Council, by Regulation (EC) No 907/2007[7] repealed the anti-dumping duties on imports of urea originating in Russia. It was concluded that there was no continuation of material injury to the Community industry and that there was no likelihood of recurrence of injury thereto in the absence of measures.

4. Current investigation

4.1. Investigation period

(7) The investigation of continuation or recurrence of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2002 up to the end of the RIP (period considered).

4.2. Parties concerned by the investigation

(8) The Commission officially advised the applicant, the Community producers, the exporting producers in Belarus, Croatia, Libya and Ukraine (hereinafter the exporters concerned), the importers, traders, users and their associations known to be concerned, as well as the representatives of the government of the exporting countries, of the initiation of the review.

(9) The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation.

(10) The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(11) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(12) In view of the apparently large number of Community producers, importers in the Community and exporting producers in the Ukraine, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested,

pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

(13) With regard to importers into the Community, very low cooperation was obtained as only one importer expressed its willingness to cooperate. It was therefore decided that sampling was not necessary with regard to importers.

(14) Twelve Community producers properly completed the sampling form and formally agreed to cooperate further in the investigation. Four out of these 12 companies, which were found to be representative of the Community industry in terms of volume of production and sales of urea in the Community, were selected for the sample. The four sampled Community producers accounted for around 60 % of the total production of the Community industry during the RIP, whilst the above 12 Community producers represented around 80 % of the production in the Community. This sample constituted the largest representative volume of production and sales of urea in the Community which could reasonably be investigated within the time available.

(15) Four exporting producers in Ukraine properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. These four exporting producers accounted for almost 100 % of the total exports from Ukraine to the Community during the RIP. Due to the low number of cooperating companies in Ukraine, it was decided not to apply sampling, and all companies were invited to submit a questionnaire.

(16) Replies to the questionnaires were received from four Community producers, one importer, two users, and four exporting producers in Ukraine and one each in Belarus, Croatia and Libya. In addition, several importers and users and their associations submitted comments without replying to the questionnaire.

(17) The Commission sought and verified all information deemed necessary for the purpose of a determination of the likely continuation of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Sampled Community producers:*
- Fertiberia SA, Madrid, Spain,
- SKW Stickstoffwerke Piesteritz GmbH, Lutherstadt Wittenberg, Germany,
- Yara Group (Yara Spa Ferrara, Italy and Yara Sluiskil BV, Sluiskil, the Netherlands),
- Zakłady Azotowe Puławy SA, Puławy, Poland;

(b) *Exporting producers:*
- Ukraine:
  - Joint Stock Company Concern Stirol, Gorlovka,

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— Close Joint Stock Company Severodonetsk, Severodonetsk,
— Joint Stock Company Dnipro Azot, Dneprodzerzhinsk,
— Open Joint Stock Company Cherkassy Azot, Cherkassy;
— Croatia:
— Petrokemija DD, Kutina;

(c) *Community importers:*
— Dynea Austria GmbH, Krems, Austria;

(d) *Community users:*
— Associazione Liberi Agricoltori Cremonesi, Cremona, Italy,
— Acefer, Asociación Comercial Española de Fertilizantes, Madrid, Spain.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is the same as determined in the original investigation, namely, urea currently classifiable within CN codes 3102 10 10 and 3102 10 90 (the product concerned) and originating in Belarus, Croatia, Libya and Ukraine.

(19) Urea is produced mainly from ammonia, which in turn is produced from natural gas. It may take a solid or a liquid form. Solid urea can be used for agricultural and industrial purposes. Agricultural grade urea can be used either as a fertiliser, which is spread on to the soil, or as an animal feed additive. Industrial grade urea is a raw material for certain glues and plastics. Liquid urea can be used both as a fertiliser and for industrial purposes. Although urea is presented in the different forms mentioned above, its chemical properties remain basically the same and may be regarded for the purposes of the present proceeding as one product.

2. Like product

(20) As established in the original investigation, this review investigation has confirmed that the products manufactured and exported by the exporting producers in Belarus, Croatia, Libya and Ukraine, those manufactured and sold on the domestic market of these countries, as well as those manufactured and sold by the Community producers on the Community market all have the same basic physical, chemical and technical characteristics and essentially the same uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(21) Given the conclusions reached regarding likelihood of continuation or recurrence of injury, only the core arguments regarding likelihood of continuation or recurrence of dumping are developed below.

1. Dumping of imports during the review investigation period

1.1. General principles

(22) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place during the RIP and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

(23) In case of the three export countries with market-economy status, namely Croatia, Libya and Ukraine, normal value was determined in accordance with Article 2(1) to (3) of the basic Regulation. In case of Belarus, normal value was established according to Article 2(7) of the basic Regulation.

1.2. Croatia

(24) The dumping margin for the sole exporting producer in Croatia was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(5), (11) and (12) of the basic Regulation.

(25) Croatia exported more than 200 000 tonnes of urea to the Community during the RIP, capturing 2,3 % of the Community market. The sole known and cooperating exporting producer was still found to export at significantly dumped prices to the Community, as far as the RIP is concerned. The dumping margin found exceeded 20 %.

(26) There were significant doubts as to whether the costs for gas, which is the major input to produce urea, were reasonably reflected in the records of the exporting producer. Indeed, it was found that gas was sourced under particular conditions, determined by the fact that both the exporting producer and the gas supplier are majority-owned by the Croatian state and that gas prices were abnormally low. In the absence of any undistorted gas prices relating to the Croatian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices would have to be established on 'any other reasonable basis, including information from other representative markets'. As the majority of the gas used for manufacturing the product concerned is of Russian origin, the adjusted price could be based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs, Waidhaus being the main hub for Russian gas sales to the EU. This would increase the dumping margin significantly. Given the fact that dumping exists without this adjustment, and the conclusions on likelihood of recurrence of injury set out below, this matter was not pursued.

1.3. Belarus, Libya and Ukraine

(27) As explained in recitals 29, 38 and 45, the quantities exported from the three other exporting countries concerned reached such low levels that it was considered that the export prices associated therewith would not be sufficiently reliable, in isolation, to establish a finding regarding continuation of dumping.

2. Likelihood of recurrence of dumping

2.1. Belarus